U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15360781

Date: JUL. 20, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a psychiatric nurse practitioner, seeks second preference immigrant classification as an individual of exceptional ability in the sciences, arts or business, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

The Nebraska Service Center Director concluded that the Petitioner qualified for classification as an advanced degree professional. However, the Director determined that the evidence did not establish that the endeavor is of national importance, that the Petitioner is well positioned to advance the endeavor, or that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner reasserts his eligibility for a national interest waiver and argues that the Director erred in the decision. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification (emphasis added), as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act provides that "[t]he term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

> Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.
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> Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.
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> Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).[1] Dhanasar states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[2] grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The Petitioner holds a U.S. master's degree in nursing, which he earned in May 2018. We agree. The remaining issue to be determined, therefore, is whether the Petitioner also qualifies for a national interest waiver under the analytical framework set forth in Dhanasar.

The Petitioner is working as a psychiatric mental health nurse practitioner whose duties include providing "complex care coordination and advanced care . . ." as well as "diagnostic, therapeutic, and preventative healthcare services for patients . . . ." In doing so, he attends to approximately twelve patients per day and is "responsible for patient evaluation, interpretation, diagnosis, and prescribing the appropriate medical and therapeutic measures."

In his initial filing, the Petitioner indicated that he "intends to continuously work and practice as a Nurse Practitioner in the field of Psychiatric Mental Health, providing psychiatric care to mentally-ill patients." In response to the Director's request for evidence (RFE), the Petitioner provided additional information concerning his proposed endeavor, including that he intends to operate his own mental health services business through his registered limited liability company (LLC), [redacted] He states that, although he would be the sole healthcare provider initially, he intends to advertise for a variety of additional positions, including support staff and other nurses, and as such, his company will become an employer of U.S. workers. His goal is to expand from 150 patients within the first three months to 300 patients within six months and he expects to partner with other nurse practitioner groups to increase his patient load. Through [redacted] he hopes to address inequities and shortages in patient access to quality healthcare services.

Although the Director did not make an explicit finding, the record supports a determination that the Petitioner's proposed endeavor has substantial merit. For example, the record includes articles and statistics discussing the shortages of mental healthcare providers and the adverse effects of mental health disorders on public health.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement,

[1] In announcing this new framework, we vacated our prior precedent decision, Matter of New York State Department of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998).
[2] See also Poursina v. USCIS, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).
[3] See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

we look to evidence documenting the "potential prospective impact" of his work. We conclude that while his endeavor does have substantial merit, the record does not establish by a preponderance of the evidence that the Petitioner's patient work would impact the field of psychiatric mental health or the U.S. healthcare industry more broadly, as opposed to being limited to the specific patients and workplace he serves.

Similarly, in Dhanasar, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. Id. at 893. As more fully explained below, the Petitioner's mental healthcare work impacts the individuals he treats, and even considering a mental health provider shortage, he has not persuasively established how his activities will have a broader impact. As explained in the RFE, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." See Dhanasar, 26 I&N Dec. at 889. In Dhanasar, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." Id.

Regarding his proposed endeavor, the Petitioner has not explained, for instance, how treating 150 to 300 patients will have a broader impact on the healthcare field, particularly without knowing how many patients the Petitioner might attend to per day or how his business will operate differently than other preexisting mental health practices. To further illustrate by example, the Petitioner has not provided an analytical breakdown of his impact to the healthcare system or how his work will affect the mental healthcare provider shortages he cites. Through the Petitioner's proposed endeavor, he plans to address the disparate access to quality health care that minority groups experience, but he has not substantiated what specific impact his practice will have on those disparities. We do not know, for example, whether he intends to serve only minority patients or what percentage of his patient load will be among those groups who would otherwise experience disparate healthcare access and quality. Moreover, we do not know how the Petitioner plans to address issues that affect access to services, such as the inability to pay for services or the lack of sufficient insurance coverage. Even if these details were provided, the Petitioner would still need to explain how addressing the disparate access and treatment would have a broader impact beyond the specific patients he treats. Here, the Petitioner improperly relies on the impact he makes on his individual patients as sufficient to meet the first Dhanasar prong. Accordingly, without sufficient documentary evidence of its broader impact, the Petitioner's proposed endeavor does not meet the "national importance" element of the first prong of the Dhanasar framework.

The Petitioner submitted letters of recommendation in which professional and academic acquaintances familiar with the Petitioner's work praise his education, experience, and abilities in the field. Although we acknowledge [redacted]'s statements that the Petitioner is among a small number of those who have pioneered a successful approach to diagnosing and treating mental health conditions, the author does not explain the nature of the Petitioner's "didactic approach" or whether this approach has been adopted in the Petitioner's workplace or in the field as a whole. The record contains little corroborating evidence of any approach. Similarly, while the author emphasized that the Petitioner's "core research thrust areas" have significantly contributed to the challenging area of [redacted] the author does not provide sufficient detail or evidence to substantiate the claim of a significant contribution in this area.

A different letter from another author, [redacted] contains nearly identical language and formatting to [redacted]'s letter. In examining the content of [redacted]'s letter, we observe statements that the Petitioner's work was viewed and considered in conferences that were attended by Illinois and Wisconsin medical professionals. However, we have little information on the specific work the Petitioner contributed to the conference or whether it impacted the medical community at large. Likewise, the letter references the Petitioner's "record of innovation" but the author provides little detail on what this innovation is or whether the innovation has impacted the field more broadly. The author identifies "core research thrust areas" in which the Petitioner contributed, "including bridging the gap in treating patients in a multidisciplinary team approach with their Primary Care Physicians and our specialty." However, the author does not explain the "bridging the gap" work, the impact of it, how it involves an area of research, or any specific detail concerning the Petitioner's role in the work.

Overall, the portions of identical language and formatting contained in the letters diminishes the probative value of the letters as a whole because it suggests the letters were not independently written. This, combined with the vague and unsubstantiated claims made in the letters, does not persuasively establish the national importance of the Petitioner's proposed endeavor. While we acknowledge the Petitioner's claims and the authors' letters, the record does not indicate that the Petitioner's ideas or approaches have been implemented such that the broader impact of his work is established. For instance, the Petitioner has not shown that the benefits to the regional or national economy resulting from his mental health work would reach the level of "substantial positive economic effects" contemplated by Dhanasar. Id. at 890. Nor has he established that his endeavor has significant potential to employ U.S. workers at a level commensurate with national importance.

On appeal, the Petitioner argues that the Director erred in the national importance determination because the decision implied that the people of Wisconsin are inconsequential to the nation. The Petitioner also alleges that the Director ignored how the Petitioner's work is relevant to all fifty states with an achievable national reach. In examining the Director's decision, we do not find support for these assertions.[4] The Petitioner's argument incorrectly focuses on the importance and value of his patients as individuals rather than on the impact of his proposed endeavor. This distinction is important, as the Director determined that the evidence was insufficient to establish the proposed endeavor's broader impact. While the individual patients the Petitioner serves certainly are valuable and in no way inconsequential, this fact alone does not discharge the Petitioner's burden to establish the national or global implications of his work with them or his work overall. Accordingly, the Petitioner's proposed work does not meet the first prong of the Dhanasar framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the Dhanasar precedent decision, the Petitioner has not

[4] Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's remaining appellate arguments. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in Dhanasar, therefore, would serve no meaningful purpose.

III. CONCLUSION

The Petitioner has demonstrated that he qualifies for the EB-2 classification under section 203(b)(2)(A) of the Act. However, as the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reason. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Skirball Cultural Ctr., 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.